



Corporate Excise DOR Directive 98-1

GOVERNMENT DOCUMENTS
COLLECTION

Massachusetts
Department of
Revenue

University of Massachusetts

The Use of Ownership Attribution Rules in Determining the Eligibility of a Dividend for the Massachusetts Dividends Received Deduction

Facts

A Massachusetts corporation (M) owns 10% of the voting stock of a Delaware Corporation (D) and a wholly owned subsidiary of M owns another 5% of D's voting stock. D distributes a dividend to its shareholders.

Issue

Do the constructive ownership rules of Internal Revenue Code § 318 apply in determining whether a dividend is eligible for the Massachusetts dividends received deduction?

Directive

The constructive ownership rules of Internal Revenue Code § 318 do not apply for purposes of determining whether a corporation receiving a dividend owns at least 15% of the voting stock of the corporation paying the dividend. Since M's 10% direct ownership of D is less than the 15% ownership threshold, dividends M receives from D are not eligible for the Massachusetts dividends received deduction. M can not aggregate its 10% ownership with the 5% ownership of a wholly owned subsidiary in order to equal or surpass the 15% ownership threshold.

Discussion of Law:

In determining a corporation's taxable net income, Massachusetts generally allows a deduction from net income equal to 95% of the value of all dividends received. G.L. c. 63, § 38(a)(1). The deduction is not allowed, however, if the corporation receiving the dividend "owns less than fifteen per cent of the voting stock of the corporation paying such dividend." G.L. c. 63, § 38(a)(1)(iii). The plain meaning of the phrase "owns less than 15% of the voting stock" refers to direct ownership of the voting stock for the purpose of determining a corporation's eligibility for a deduction.¹ Moreover, the constructive ownership rules of Internal Revenue Code § 318, which are used to determine whether a shareholder and any related shareholders control a particular corporation, apply only when expressly invoked by statute and in determining whether a corporation can claim a federal dividends received deduction under analogous ownership tests. See IRC § 243(c). Thus, there is no basis for applying these rules in Massachusetts to determine eligibility for the Massachusetts dividends received deduction.

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1. Compare the statutory language allowing a dividends received deduction for utility corporations. See G.L. c. 63, § 52A(b) ("investment in such other utility corporations which represent eighty per cent or more of the voting stock thereof").